

AUG 30 1993

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments, FM Broadcast)
Stations (Bemidji, Minnesota))

RM-8250

MM Docket No. 93-170

To: Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS IN SUPPORT OF RULE MAKING

Mr. J. Thomas Lijewski (Petitioner), by his attorney, hereby replies to R.P. Broadcasting, Inc.'s (RPB) August 16, 1993 Comments and to Red Lake Band of Chippewa Indians' (Red Lake) August 16, 1993 Comments and Counterproposal. In reply thereto, the following is respectfully submitted:

1) Red Lake seeks to have the channel sought by Mr. Lijewski allocated to the Red Lake Reservation, MN rather than Bemidji, MN as requested by Mr. Lijewski.¹ Generally, Red Lake's Comments and Counterproposal is devoted to explaining why Red Lake is a superior

¹

At footnote one of its Comments and Counterproposal, Red Lake indicates that it filed informal comments in this proceeding on July 21, 1993. Undersigned counsel does not recall reviewing those informal comments and he does not believe that the informal comments were served upon him. In as much as footnote one indicates that the Comments and Counterproposal supercede the informal comments, an ex parte issue does not appear appropriate. However, we request service of those informal comments and we reserve the right to respond as required.

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allocation.² As explained below, the Commission is not presented with the "either or" situation depicted by Red Lake.

2) Attached hereto is an engineering statement which shows that an equivalent channel, Channel 231C1, may be allotted to the Red Lake Reservation; Channel 238C1 may be allotted to Bemidji, MN as initially requested by Mr. Lijewski. Thus, the Commission is able to satisfy Mr. Lijewski's original request while satisfying Red Lake's request for a C1 channel for its Reservation by utilizing an alternate channel for the Red Lake Reservation. Because another channel exists for Red Lake, the Commission may avoid a comparative analysis by allotting Channel 238C1 to Bemidji, MN and 231C1 to the Red Lake Reservation.

3) RPB's Comments are equally nontroubling. In brief, RPB objects to the location of the site in a cemetery, objects to the site because of its relation to an airport runway, and objects to the economics of the station. Because RPB devotes a majority of its Comments to the economics of the proposed station, we shall consider RPB's economic issue first.

4) The Commission is not interested in economic arguments against a proposed allocation and RPB cites no Commission precedent

² At paragraph 7 Red Lake incorrectly states that "Mr. Lijewski has not stated an intention to file an application should the Commission allot Channel 238C1 to Bemidji." Mr. Lijewski clearly stated his intention to file an application in his June 29, 1993 Comments in Support of Rule Making.

in support of its economic argument.³ Consequently, the bulk of RPB's Comments may be entirely disregarded.

5) RPB's concern that the site coordinates selected for the notice of proposed rule making is equally misplaced. First, the coordinates selected are the proper reference coordinates for Bemidji, MN.⁴ Mr. Lijewski properly utilized those coordinates as required by §73.208(a).

6) Second, paragraph two of the Commission's Notice of Proposed Rule Making indicates that the requested channel may be allotted without a site restriction, i.e., there are any number of locations available for site location. In the engineering statement attached hereto, it has been calculated that there are approximately 4000 square kilometers in which to place the proposed Bemidji station, including the existing tower utilized by KAWE(TV) and KCRB(FM).⁵ Thus, RPB's claim that no suitable site exists, is misplaced and incorrect.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that channel 238C1 be allotted to Bemidji,

³ RPB does argue that the Commission's current allocation approach is unfounded and harmful to the public interest. Comments, para. 9. The instant rule making proceeding is not the appropriate vehicle for RPB to attempt to change the Commission's allocation policies.

⁴ Thus, the location of the reference site in a cemetery 2.2 miles from an airport is inconsequential. RPB has not shown that reference coordinates violates any Commission rule.

⁵ RPB relies upon the Commission's recently released Report and Order concerning upgrades requested in a new single step process. Comments, para. 4. While that Report and Order does not apply to the instant rule making for a new channel, it is noted that the tower utilized by KAWE(TV) and KCRB(FM) would satisfy the requirement of defining a "suitable site."

MN and that Channel 231C1 be allotted to the Red Lake Reservation as an alternate channel for that community as follows:

City	Present	Proposed
Bemidji, MN	266C1, 279C1	238C1, 266C1, 279C1
Red Lake Reservation, MN		231C1

Respectfully submitted,
J. THOMAS LIJEWSKI

Hill & Welch
Suite #113
1330 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 775-0070
August 30, 1993


Timothy E. Welch

His Attorney

ENGINEERING STATEMENT IN
SUPPORT OF REPLY COMMENTS
MM DOCKET 93 - 170
CHANNEL 238C1 - BEMIDJI, MN
Thomas J. Lijewski
Bemidji, MN

August 26, 1993

Prepared for: Mr. Thomas J. Lijewski
111 Marquette Avenue, South
#1501
Minneapolis, MN 55401

CARL E. SMITH CONSULTING ENGINEERS

C O N T E N T S

Title Page

Contents

Engineering Affidavit

Engineering Statement

1.0 Availability of Suitable Sites

Fig. 1.0 - Fully Spaced
Site Location Area
Channel 238C1 - Bemidji, MN

2.0 Red Lake Reservation Counterproposal

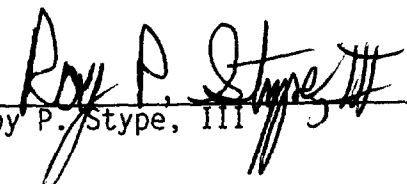
Table 2.0 - FM Allocation Study - Channel 231C1 (94.1 MHz) -
Red Lake Reservation, MN

ENGINEERING AFFIDAVIT

State of Ohio)
)
County of Summit) ss:

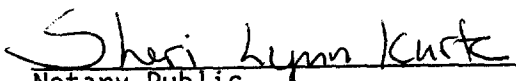
Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Thomas J. Lijewski to prepare the attached "Engineering Statement In Support of Reply Comments - MM Docket 93-170 - Channel 238C1 - Bemidji, MN."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me this **26th** day of **August, 1993**.



Notary Public

SHERI LYNN KURTZ, Notary Public
For the State of Ohio
My Commission Expires June 14, 1995
Recorded in Summit County

/SEAL/

CARL E. SMITH CONSULTING ENGINEERS

ENGINEERING STATEMENT

1.0 AVAILABILITY OF SUITABLE SITES

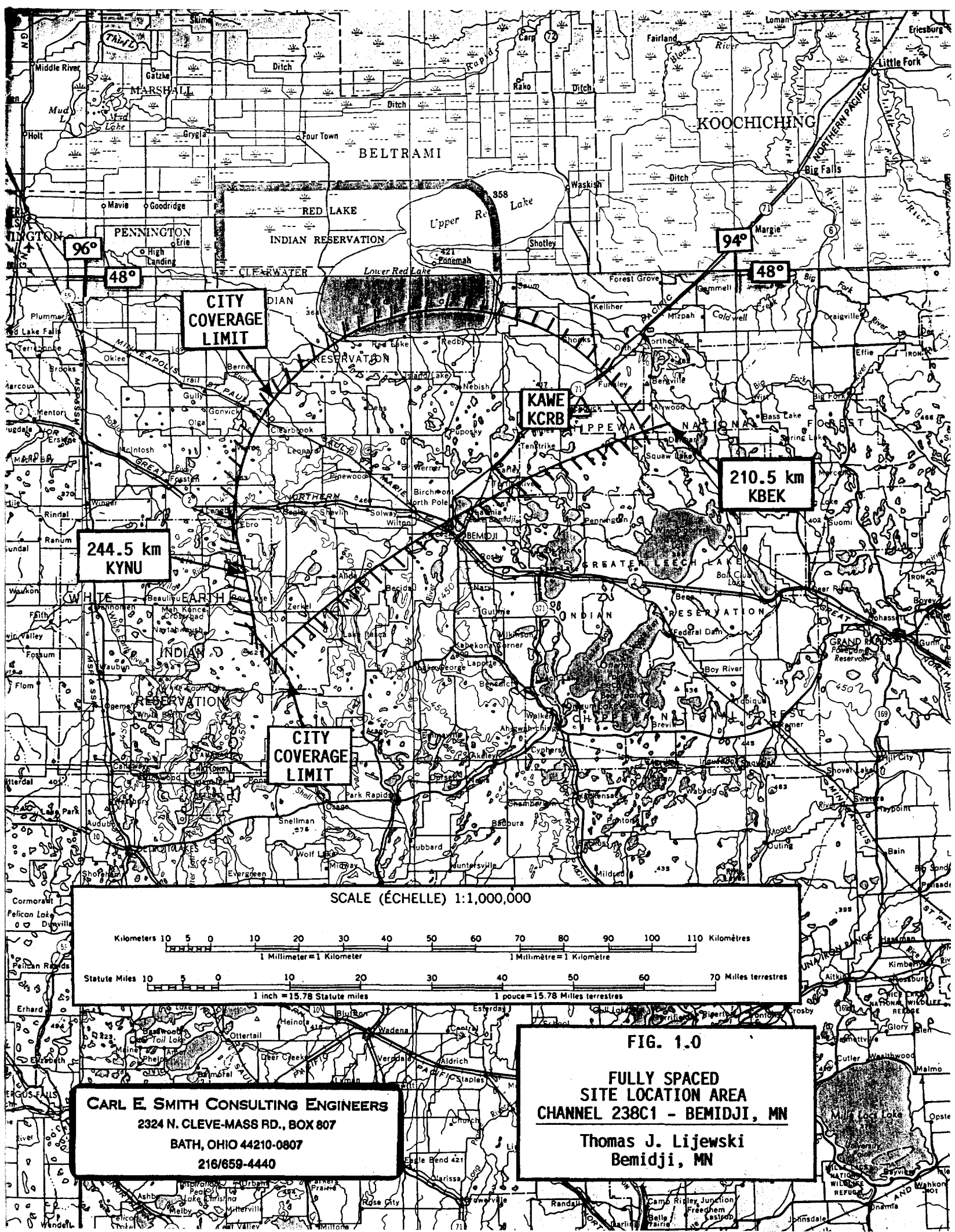
This engineering exhibit is prepared on behalf of Thomas J. Lijewski, proponent of MM Docket 93-170, which proposes to allot Channel 238C1 to Bemidji, Minnesota, as an additional FM service. It supports reply comments in this proceeding.

Comments were filed in this proceeding by R.P. Broadcasting, Inc., licensee of Radio Station WBJI(FM) - Bemidji, Minnesota, opposing the proposed allotment. These comments claim that the coordinates specified in the Notice of Proposed Rulemaking in this proceeding are unsuitable for tower construction, rendering the entire proposal unacceptable. This claim, however, is totally baseless. The coordinates which were specified in this Notice are the reference coordinates for Bemidji, and are not intended to necessarily represent a specific potential transmitter site. The specification of these coordinates fully complies with Section 73.208(a)(1) of the FCC Rules, since Channel 238C1 can be allotted to Bemidji without the need for a site restriction.

There is actually an extremely large area of approximately 4000 square kilometers in which the transmitter site for Channel 238C1 in Bemidji could be located while complying with the applicable spacing and city grade coverage requirements. This area, which is shown in Figure 1.0, is bounded by the required spacings to KBK - Mora, Minnesota (Channel 238C3) and KYN - Jamestown, North Dakota (Channel 238C1), as well as the restrictions imposed by the requirement to provide city grade coverage to Bemidji. Figure 1.0 also shows the location of an existing 1078 foot tower, utilized by KAW-TV and KCRB(FM), which is located within this fully spaced site area. As outlined in footnote 19 of the Report and Order

in MM Docket 92-159, this existing tower within the fully spaced site area satisfies the requirements of the new single step upgrade rules to show the availability of a suitable fully spaced site, even though these new rules do not apply to this proceeding.

Based upon the above information, the Notice of Proposed Rulemaking in this proceeding properly specified the Bemidji reference coordinates, pursuant to Section 73.208(a)(1) of the FCC Rules, since Channel 238C1 can be allotted to Bemidji without a site restriction. Furthermore, there is a large area in which the transmitter site for this channel can be located, including an existing tall tower, effectively negating WBJI's claim that no suitable site exists for this channel.



**CITY
COVERAGE
LIMIT**

**KAW
KCRB**

**210.5 km
KBEK**

**244.5 km
KYNV**

**CITY
COVERAGE
LIMIT**

SCALE (ÉCHELLE) 1:1,000,000

Kilometers 10 5 0 10 20 30 40 50 60 70 80 90 100 110 Kilomètres
1 Millimètre = 1 Kilomètre

Statute Miles 10 5 0 10 20 30 40 50 60 70 Miles terrestres
1 inch = 15.78 Statute miles 1 pouce = 15.78 Miles terrestres

CARL E. SMITH CONSULTING ENGINEERS
2324 N. CLEVE-MASS RD., BOX 807
BATH, OHIO 44210-0807
216/659-4440

FIG. 1.0
**FULLY SPACED
SITE LOCATION AREA
CHANNEL 238C1 - BEMIDJI, MN**
**Thomas J. Lijewski
Bemidji, MN**

2.0 RED LAKE RESERVATION COUNTERPROPOSAL

Comments and a counterproposal were also filed in this proceeding by the Red Lake Band of Chippewa Indians. This counterproposal requested that Channel 238C1 be allotted to Red Lake Reservation, Minnesota, rather than to Bemidji. It will not be necessary to comparatively evaluate these proposals, however, since there is an alternate Class C1 channel which can be allotted to Red Lake Reservation, permitting both proposals to be accommodated.

Table 1.0 is an FM allocation study for Channel 231C1 in Red Lake Reservation, which was conducted from the same coordinates specified in the counterproposal:

NL - 47° 55' 30"
WL - 95° 19' 00"

As shown in this table, operation on Channel 231C1 from these coordinates would meet the spacing requirements to all other facilities requiring protection. Thus, Channel 231C1 can be allotted to Red Lake Reservation, rather than Channel 238C1, permitting Channel 238C1 to be allotted to Bemidji, as proposed.

TABLE 2.0

FM ALLOCATION STUDY - CHANNEL 231C1 (94.1 MHz) - RED LAKE RESERVATION, MN

THOMAS J. LIJEWSKI
BEMIDJI, MN

STUDY COORDINATES: 47/55/30 95/19/00

STATION -----	LOCATION	CHANNEL -----	CLASS -----	SPACING (km) -----	REQUIRED SPACING* (km) -----	NOTES -----
CKSB7F	Kenora, ON	228	B	213.44	95.0	
WDAYFM	Fargo, ND	229	C	174.51	105.0	
WTBX	Hibbing, MN	230	C1	183.65	177.0	
KFML	Little Falls, MN	231	A	226.37	200.0	
ALLOTMENT	Ear Falls, ON	231	C	337.68	302.0	10
KSDM	International Falls, MN	232	A	161.77	133.0	4
KEZZ	Aitkin, MN	232	A	190.70	133.0	4
KEZZ	Aitkin, MN	232	C3	192.83	144.0	5, 10
CHIQFM	Winnipeg, MB	232	C	253.12	230.0	
KSTPFM	St. Paul, MN	233	C	359.43	105.0	
KNOXFM	Grand Forks, ND	234	C1	131.36	82.0	
KSKK	Staples, MN	234	C3	172.68	76.0	8
KCLDFM	St. Cloud, MN	284	C	269.19	41.0	
ALLOTMENT	Rainy River, ON	285	C	104.11	48.0	10

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

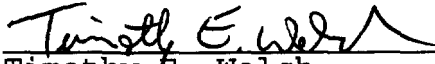
- | | |
|--------------------------------------|-------------------------|
| 1 - Applied For Under Section 73.215 | 6 - Pending Application |
| 2 - Construction Permit | 7 - Proposed Rulemaking |
| 3 - Channel Deletion Proposed | 8 - Rulemaking Petition |
| 4 - Move From This Channel Ordered | 9 - Short-Spaced |
| 5 - Move to This Channel Ordered | 10 - Vacant Allotment |

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of August, 1993 supervised the mailing of the foregoing REPLY COMMENTS IN SUPPORT OF RULE MAKING by first class United States mail, postage prepaid, to the following:

John Crigler, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive #900
Arlington, VA 22203-1633

Harry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W. #250
Washington, D.C. 20036



Timothy E. Welch